

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WHEREAS, the related actions *Spence v. Ubisoft, Inc.*, C 06-2169 MHP and *Lerg v. Ubisoft, Inc.*, 06-03802 JSW pending in this District; and,

13 WHEREAS, counsel for the plaintiffs have each concluded that it in the best
14 interests of the respective parties and absent putative class members that the *Lerg* action
15 be transferred and consolidated with the *Spence* action for all purposes and proceed as
16 contemplated herein; and,

17 WHEREAS, all served parties, through their respective counsel, have stipulated to
18 the terms provided herein;

19 WHEREAS, it is anticipated that additional related actions may be transferred to,
20 removed to or filed in this Court; and.

WHEREAS, the existence of common questions of law and fact in the Actions now pending before this Court, the interests of fair and efficient administration of the Actions and the avoidance of unnecessary duplicative efforts, warrants the consolidation of the Actions, establishment of an organizational structure for plaintiffs' counsel, and the setting of a status conference to discuss, among other things, schedules for the filing of pleadings, motion practice and discovery, and good cause appearing therefor;

1 **IT IS HEREBY ORDERED AS FOLLOWS:**

2 **I. CONSOLIDATION AND TREATMENT OF SUBSEQUENT ACTIONS**

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5 1. The Court finds that *Spence v. Ubisoft, Inc., C 06-2169 MHP* (March 24,
6 2006) and *Lerg v. Ubisoft, Inc., 06-03802 JSW* (June 16, 2006) are related actions
7 pursuant to Civil L.R. 3-12(a) in the that the actions involve substantially the same
8 parties, transactions and events, and it appears likely that there will be an unduly
9 burdensome duplication of labor and expense or conflicting results if the cases are
10 conducted before different judges. Pursuant to Civil L.R. 3-12(f)(3), the Clerk shall
11 reassign the *Lerg* action to this Court, the Hon. Marilyn Hall Patel presiding, and shall
12 notify the parties and the affected Judges accordingly. This court hereby consolidates the
13 *Spence* and *Lerg* actions and the actions shall be referred to herein as the Consolidated
14 Action. Each document filed by a party to this litigation shall bear the following caption:
15

16 In Re Ubisoft DRM Litigation

17 No. C 06 2169 MHP

18 2. The terms of this Order shall apply to actions later instituted in, removed to,
19 or transferred to this Court that involve the same or substantially similar issues of law and
20 fact, subject to the following procedures:

21 a. When such a case is filed in, removed to, or transferred to this Court,
22 the Clerk of the Court shall:

23 (1) place a copy of this Order in the separate file for such action;
24 (2) provide a copy of this Order by mail or electronically
25 pursuant to the local rules to counsel for plaintiff(s) in the
26 newly filed or transferred action and to any defendant(s) in
27 the newly filed or transferred action; and

(3) make an appropriate entry on the docket for the Consolidated Action.

b. Each new case that arises out of the subject matter of the Consolidated Action which is filed in this Court or transferred to this Court, shall be consolidated with the Consolidated Action and this Order shall apply thereto, unless a party in such newly-filed or transferred action objects to consolidation, as provided for herein, or any provision of this Order, within ten (10) days after the date upon which a copy of this Order is served on counsel for such party, by filing an application for relief and this Court deems it appropriate to grant such application.

12 3. Counsel shall call to the attention of the Court and the Clerk the filing or
13 transfer of any case which might properly be consolidated with the Consolidated Action.
14 Mailing or other delivery of a copy of this Order by Defendants' counsel or Plaintiffs'
15 Co-Lead Counsel (see II., below), as appropriate, to the counsel in any newly filed or
16 transferred actions shall constitute valid notice thereof for purposes of establishing its
17 applicability to such action in accordance herewith.

19 4. A status conference is set for _____ at ____ p.m. The agenda
20 for the status conference shall include a schedule for the filings of pleadings or other
21 motion practice, a discovery plan, a schedule for class certification, the potential for
22 settlement mediation, and such other matters as the parties or the Court deem appropriate.

II. CONSOLIDATED COMPLAINT AND RESPONSE THERETO

26 1. All plaintiffs shall file by July 25, 2006 a consolidated complaint, which
27 shall be the only proposed class complaint to which defendants shall respond.

1 2. Defendants need not respond to any of the related pending or subsequently
2 filed complaints. Defendants shall answer or otherwise respond to the consolidated
3 complaint within 35 days of the filing of the consolidated complaint. Defendants'
4 response to the consolidated complaint shall be deemed to be their response to any later
5 filed complaint in any action that is thereafter consolidated with this Consolidated Action.
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7 **III. ORGANIZATION OF PLAINTIFFS' COUNSEL**

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9 1. Under Federal Rule of Civil Procedure 23(g)(2), *inter alia*, Interim Class
10 Counsel and Plaintiffs' Co-Lead Counsel shall be Kamber & Associates, LLC and Giskan
11 & Solotaroff LLP (collectively, "Co-Lead Counsel"). Co-Lead Counsel, acting on behalf
12 of plaintiffs, shall have the following duties:

13 a. To coordinate all proceedings, including preparing, structuring, and
14 presenting pretrial and other management-related orders;

15 b. To encourage full cooperation and efficiency among all counsel;

16 c. To create any necessary committees and appoint committee chairs
17 and otherwise delegate responsibilities for specific tasks in a manner
18 to assure that pretrial and trial preparation is conducted effectively,
19 efficiently, and economically;

20 d. To delegate work responsibilities and monitor the activities of
21 counsel to assure that schedules are met and unnecessary
22 expenditures of time and expense are avoided;

23 e. To act as spokespersons at all court conferences;

24 f. To call meetings of themselves and/or other counsel as appropriate
25 or necessary from time to time;

26 g. To initiate and conduct settlement negotiations with counsel for the
27 Defendant;

- 1 h. To determine Plaintiffs' position on all matters arising during this
2 litigation (after such consultation with other counsel as they deem
3 appropriate) and present such position orally and/or in writing to the
4 Court and opposing parties;
- 5 i. To consult with and employ experts, as necessary;
- 6 j. To initiate, coordinate and conduct discovery;
- 7 k. To represent Plaintiffs at trial and on any appeal of this matter;
- 8 l. To negotiate and execute agreements with local counsel or other
9 cooperating attorneys;
- 10 m. To submit a fee application on behalf of Plaintiffs' counsel and
11 allocate any fees that may be awarded by the court; and
- 12 n. To perform such other duties as are necessary in connection with the
13 prosecution of this litigation.

14 2. Co-Lead Counsel shall be the contact between plaintiffs' counsel and
15 defendants' counsel as well as the spokespersons for plaintiffs' counsel. All agreements
16 reached with the Co-Lead Counsel shall be binding on all other plaintiffs' counsel in the
17 Consolidated Action.

18 4. Co-Lead Counsel are hereby designated as the counsel for plaintiffs in the
19 Consolidated Action upon whom all notices, orders, pleadings, motions, discovery, and
20 memoranda relating to the Consolidated Action shall be served, and defendants shall
21 effect service of papers on plaintiffs in the consolidated Action by serving each of the Co-
22 Lead Counsel.

23 5. No motion or request for discovery shall be served or filed by plaintiffs, or
24 other pretrial proceedings initiated by plaintiffs, except by or with the authorization of
25 Co-Lead Counsel.

26 6. The organization structure set forth in this section applies to all plaintiffs'
27 counsel in the Consolidated Action, including any action subsequently governed by this
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Order.

7. No communications among plaintiffs' counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

IV. ADMISSION OF ATTORNEYS AND APPEARANCE

Each attorney acting as counsel for any party herein who is a member in good standing of the bar of any United States District shall be deemed admitted *pro hac vice* before this Court, without further action, upon payment of the admission fee, in connection with these proceedings.

V. MODIFICATION OF THIS ORDER

This Order may be modified, supplemented or superseded by order of the Court or upon any party for good cause shown.

IT IS SO STIPULATED.

Dated: June 23, 2006

Liner Yankelevitz Sunshine & Regenstreif LLP

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1 Dated: June 23, 2006

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16 Attorneys for Plaintiff James Lerg, on behalf of
17 himself and all others similarly situated

18 **IT IS SO ORDERED.**

19 Dated: June 27, 2006

